

**MINUTES
of the
THIRD MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 11-12, 2015
University of New Mexico-Gallup Campus
Room 200, Student Services Tech Center
Gallup
and
Western New Mexico Correctional Facility
Grants**

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on August 11, 2015 at 9:24 a.m. at the University of New Mexico (UNM)-Gallup campus.

Present

Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Rep. Rick Little (8/11)
Sen. Linda M. Lopez (8/11)
Rep. Georgene Louis
Rep. Antonio Maestas (8/11)
Sen. Cisco McSorley
Rep. Andy Nunez
Rep. William "Bill" R. Rehm

Advisory Members

Rep. W. Ken Martinez (8/12)
Sen. John Pinto (8/11)

Absent

Rep. Zachary J. Cook, Co-Chair
Sen. Joseph Cervantes
Rep. Jim Dines
Sen. Sander Rue
Sen. Lisa Torracco

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. Michael S. Sanchez
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Peter Wirth

Guest Legislator

Rep. Patricia A. Lundstrom (8/11)

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Caela Baker, Staff Attorney, LCS

Monica Ewing, Staff Attorney, LCS

Rebecca Griego, Records Officer, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, August 11

Senator Martinez welcomed the committee members and meeting attendees, and the committee members introduced themselves.

Update from the Public Defender Department (PDD)

Jorge Alvarado, chief public defender, discussed issues concerning staffing levels and compensation at the PDD. He stated that the Public Defender Act was amended in 2014 to exempt PDD employees from the Personnel Act. Mr. Alvarado told members of the committee that the Public Defender Commission has issued rules — located in Title 10, Chapter 12 of the New Mexico Administrative Code — concerning personnel policies.

Mr. Alvarado discussed adequacy of staffing levels at the PDD. He stated that the New Mexico Sentencing Commission (NMSC) reviewed data concerning caseloads at the PDD and recommended that the PDD receive funding for 63 additional attorneys. In the most recent fiscal year, the PDD was granted funding for 30 additional support staff, but was not granted any additional funding for attorneys. He indicated that the PDD's budget request for the upcoming fiscal year will address needs with respect to both attorney and support staff positions. Mr. Alvarado discussed the PDD's budget shortfall and indicated that a \$1.3 million special appropriation for the PDD was vetoed by the governor.

Mr. Alvarado presented several charts concerning contract counsel compensation and caseload. He indicated that there has been significant turnover in contract counsel positions. In particular, five counties in the southern part of the state — Roosevelt, Lea, Eddy, Lincoln and Luna — are experiencing a crisis due to the lack of contract counsel available to handle cases. Mr. Alvarado highlighted efforts under way at the PDD to attract and retain contract counsel. He

discussed considerations regarding whether to pay an hourly rate or a flat rate to contract counsel, and he discussed recent litigation concerning appropriate compensation for contract counsel.

Finally, Mr. Alvarado indicated that the PDD is in the process of filling approximately 50 new positions, some of which have been unfilled since the hiring freeze, and some of which are newly created positions.

Members of the committee asked questions about and discussed:

- ▶ how members of the Public Defender Commission are appointed;
- ▶ the recent litigation concerning contract counsel compensation;
- ▶ implementation of the new rule issued by the New Mexico Supreme Court concerning case management in Bernalillo County, LR2-400, and its effect on the PDD;
- ▶ details concerning contracts and compensation for contract counsel;
- ▶ a recent reversion of funding by the PDD; and
- ▶ whether employees of the PDD are subject to collective bargaining agreements.

PDD: Substantive Legislative Presentations

Mr. Alvarado presented a document containing proposed legislative changes, which can be found at www.nmlegis.gov. He discussed the concept of a "civil compromise", which would allow a victim in a criminal case to request that the case be dismissed upon the victim "being made whole". A committee member asked a question concerning removing marijuana from the list of Schedule I drugs and whether this proposed change would conflict with federal law. Mr. Alvarado responded that it would be a step toward "decriminalizing" marijuana in New Mexico, rather than legalizing it.

New Mexico Prison Population Forecast: Fiscal Year (FY) 2016-FY 2025

Tony Ortiz, executive director, NMSC, and Linda Freeman, deputy director, NMSC, presented the *New Mexico Prison Population Forecast: FY 2016 - FY 2025*. Mr. Ortiz indicated that New Mexico is experiencing a rapid increase in the female inmate population, whereas the male inmate population is increasing at a modest rate. In FY 2015, the female inmate population increased by 11 percent over the previous fiscal year. Mr. Ortiz told the committee that an effectively and safely managed prison should have at least a five percent bed-vacancy rate. This flexibility is needed to allow administrators to appropriately classify inmates based on their security risk and because there are certain inmates who cannot be safely placed in the general inmate population.

Mr. Ortiz highlighted the fact that the number of female "release eligible inmates" — those inmates who are still incarcerated because they do not have an approved parole plan — reached a high of 56 in December 2013. In June 2015, the number had decreased to 23.

Mr. Ortiz told the committee that the Corrections Department (NMCD) had opted out of the Interagency Behavioral Health Purchasing Collaborative and no longer pays the 12 percent

administrative fee on every dollar spent for services. These savings will increase the number of transitional-living facility beds for offenders, with 42 additional beds for women and 41 additional beds for men.

Ms. Freeman told the committee that the growth in the female inmate population is unprecedented. She pointed out that in FY 2016, the projected high count for the female inmate population is 855, and in FY 2017, the projected high count is 904. She told members of the committee that both of these figures exceed the current operational capacity at the New Mexico Women's Correctional Facility in Grants, which was recently increased to 792 beds. Ms. Freeman elaborated on the methodology used to formulate these projections.

Members of the committee asked questions about and discussed:

- ▶ the cost per day to house inmates;
- ▶ the extent of alcohol and substance abuse problems among inmates;
- ▶ the risk and needs assessment used by the NMCD;
- ▶ the average caseload for probation and parole officers;
- ▶ budget cuts experienced by the NMSC;
- ▶ the need to focus on treatment and rehabilitation to reduce prison populations; and
- ▶ whether additional tools should be developed to help courts determine risk.

The *New Mexico Prison Population Forecast: FY 2016 - FY 2025* can be accessed online at www.nmlegis.gov or at the web site of the NMSC, www.nmsc.unm.edu.

Prison Program Utilization and Recidivism Among Female Inmates in New Mexico

Kristine Denman, director, New Mexico Statistical Analysis Center, UNM, presented a report concerning prison program utilization and recidivism among female inmates in New Mexico. Ms. Denman highlighted some key findings of the study, including:

- ▶ women with longer stays in prison were more likely to participate in programming;
- ▶ women with a greater number of "criminogenic" needs and recommendations were more likely to participate in programs; and
- ▶ program participation was not significantly related to recidivism, with one exception — women who participated in educational programming were less likely to reoffend.

Members of the committee asked questions about and discussed:

- ▶ how New Mexico programs compare to national programs;
- ▶ the effectiveness of therapeutic communities and drug court programs;
- ▶ study methodology; and
- ▶ whether private prisons are providing the same level of programming as NMCD facilities.

Ms. Denman pointed out that, for the purpose of this study, programs were grouped into categories based on the general type of program. Thus, the study does not account for the effectiveness of specific programs. Ms. Denman acknowledged that this may be an important limitation of the study.

Members of the committee engaged in a discussion about probation violations, and what effect such violations have on prison populations. Mr. Ortiz indicated that most probation violators would be returned to county detention facilities, and most get at least two to three chances before being returned to a detention facility. Mr. Ortiz also told members of the committee that the Pew-MacArthur Results First Initiative is working with the NMCD to build an inventory of programs that are available to inmates.

Navajo Nation Peacemaking

Gloria Benally, peacemaking program coordinator, Navajo Nation, introduced herself and described the mission and vision of the Navajo Nation Peacemaking Program. She explained that the program promotes a nonadversarial forum for solving disputes and emphasizes Navajo customs in the resolution process. Participants in the program either voluntarily agree to participate or are referred to the program. Ms. Benally told the committee that members of the Navajo Nation community can become trained and certified as peacemakers. In addition, the peacemaking program offers mentoring services and training for youth to become youth peacemakers.

Ms. Benally explained that the Navajo Nation Peacemaking Program accepts matters that would require a court order to achieve resolution. Referrals to the peacemaking program are made by court order. Upon reaching a resolution during a peacemaking session, the terms of the resolution are sent back to the court, which issues an order finalizing the agreement.

Ms. Benally described the collaboration between the Navajo Nation Peacemaking Program and other agencies and officials, and she presented an organizational chart identifying the role of the peacemaking program in relation to other programs. Finally, Ms. Benally provided an overview of the types of cases that are referred to the peacemaking program.

Population of Inmates in County Jails

Matthew Elwell, detention affiliate chair, New Mexico Association of Counties (NMAC), and administrator, Luna County Detention Facility, presented data concerning detention facilities. He indicated that there are six detention facilities that have attained certification through the NMAC, and four others are in the process of attaining this certification.

Mr. Elwell told the committee that the length of stay in county detention facilities is increasing. The median length of stay is 80 days for misdemeanor arrestees, 70 days for unsentenced probation violators and 114 days for unsentenced persons booked on warrants. Concerning the reasons for incarceration, Mr. Elwell stated that 62 percent are for new charges

and 36 percent are for "failure to comply", which includes probation and parole violations and arrests on warrants. Mr. Elwell pointed out that competency proceedings significantly affect length of stay. The median length of stay for inmates ultimately found to be competent was 332 days, whereas the median length of stay for inmates found to be incompetent was 537 days.

Mr. Elwell discussed Senate Joint Memorial 4 from the 2015 regular session, which requested the NMAC to study housing and clinical service options for individuals with serious mental illness who are in custody awaiting trial.

Members of the committee asked questions about and discussed:

- ▶ the Sierra County Detention Facility, which was recently closed due to a lawsuit, and the inmates of which were transferred to Luna County Detention Facility;
- ▶ shifting the focus in detention facilities to treatment and rehabilitation;
- ▶ issues concerning pregnant inmates and the provision of prenatal care;
- ▶ recent reductions in the inmate population at the Metropolitan Detention Center in Bernalillo County;
- ▶ the availability of work-release programs;
- ▶ the use of solitary confinement in county detention facilities;
- ▶ efforts to enroll inmates in Medicaid prior to release;
- ▶ availability of prescription medications to inmates upon release;
- ▶ the prevalence of mental health issues among inmates;
- ▶ challenges to obtaining NMAC accreditation for detention facilities; and
- ▶ the use of telemedicine in detention facilities.

Public Comment

Margarita Sanchez discussed issues concerning mental health, solitary confinement, civil rights, the increasing prison population, community reentry programs, the number of release-eligible inmates being held in prison and availability of educational programs.

Ignacio Torrez discussed concerns regarding drug trafficking, prison violence, the lack of jobs for former inmates and issues with the economy in New Mexico.

Recess

The committee recessed at 3:43 p.m.

Wednesday, August 12

Tour of Western New Mexico Correctional Facility

Members of the CCJ toured the Western New Mexico Correctional Facility and received a presentation from representatives of the NMCD concerning deferred maintenance at NMCD facilities.

Adjournment

There being no further business before the committee, the third meeting of the CCJ for the 2015 interim adjourned at 11:20 a.m.